



## ***VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY***

NORTHERN REGIONAL OFFICE  
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Secretary of Natural Resources

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Director  
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Regional Director

### **STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO Mondelez Global LLC FOR Mondelez Global LLC Facility VPDES Permit No. VAR05 Storm Water Registration No. VAR052367**

#### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Mondelez Global LLC, regarding the Mondelez Global LLC facility, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation.

#### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "CB-TMDL" means Chesapeake Bay Total Maximum Daily Load.

4. "CSCE" means comprehensive site compliance evaluation.
5. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
6. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
7. "Discharge" means the discharge of a pollutant.
8. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
  - a. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
  - b. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
9. "DMR" means Discharge Monitoring Report.
10. "Facility" or "Site" means the Mondelez Global LLC facility located at 8411 Virginia Meadows Drive, Manassas, Virginia 20109, from which discharges of stormwater associated with industrial activity occur.
11. "Mondelez Global LLC" means Mondelez Global LLC, a company authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Mondelez Global LLC is a "person" within the meaning of Va. Code § 62.1-44.3.
12. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
13. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
14. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
15. "Permit" means VPDES General Permit No. VAR05, which was issued under the State Water Control Law and the Regulation on July 1, 2014, and which expires on June 30, 2019. Mondelez Global LLC applied for registration under the Permit and was issued Registration No. VAR052367 on May 1, 2017.
16. "Registration statement" means a registration statement for coverage under a storm water general permit.

17. "Regulation" means The General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges of Storm Water Associated with Industrial Activity, 9 VAC 25-151-10, *et seq.*
18. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
19. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
20. "SWP3" means Stormwater Pollution Prevention Plan.
21. "Va. Code" means the Code of Virginia (1950), as amended.
22. "VAC" means the Virginia Administrative Code.
23. "VPDES" means Virginia Pollutant Discharge Elimination System.
24. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. Mondelez Global LLC owns and operates the Mondelez Global LLC facility located at 8411 Virginia Meadows Drive, Manassas, Virginia, which discharges stormwater associated with industrial activity.
2. The Permit allows Mondelez Global LLC to discharge stormwater associated with industrial activity from the Facility to an unnamed tributary of Dawkins Branch, in strict compliance with the terms and conditions of the Permit.
3. Dawkins Branch is located in the Potomac River Basin. Dawkins Branch has been neither monitored nor assessed. Broad Run is located approximately 1.8 miles downstream, and is listed in DEQ's 305(b) report as impaired for recreational use due to bacteria.
4. During a DEQ file review, DEQ staff documented the following compliance deficiencies with respect to the requirements of the Permit:
  - a. The July – December 2017 Benchmark DMR and CB-TMDL DMR for Outfall 001 were not received by DEQ by the January 10, 2018, deadline. The January – June 2019 Benchmark DMR and CB-TMDL DMR for Outfall 001 were not received by DEQ by the July 10, 2019, deadline; these were received by DEQ on August 4, 2019.

- i. Part I.A.1.b, Table 70-1, Part I.A.2.d.(2), and Part I.A.5.a of the Permit requires that the Permittee submit relevant benchmark discharge monitoring reports to DEQ by July 10 for the preceding January 1 through June 30 monitoring period, and by January 10 for the preceding July 1 through December 31 monitoring period.
    - ii. Part I.B.7.b.(1) of the Permit requires that Permittees of facilities within the Chesapeake Bay watershed monitor and submit DMRs for Total Suspended Solids (TSS), Total Nitrogen (TN), and Total Phosphorus (TP) by July 10 for the preceding January 1 through June 30 monitoring period, and by January 10 for the preceding July 1 through December 31 monitoring period.
  - b. The submitted January – June 2018 Benchmark DMR for Outfall 001 failed to include measurements for TSS, and Total Recoverable Petroleum Hydrocarbons (TRPH).
    - i. Part I.A.1.b of the Permit requires that the Permittee submit relevant benchmark discharge monitoring reports to DEQ.
  - c. The submitted January – June 2018 CB-TMDL DMR for Outfall 001 failed to include measurements for TSS, TN, and TP.
    - i. Part I.B.7.b.(1) of the Permit requires that Permittees of facilities within the Chesapeake Bay watershed monitor and submit DMRs for Total Suspended Solids (TSS), Total Nitrogen (TN), and Total Phosphorus (TP).
  - d. The submitted Benchmark DMR and CB-TMDL DMR for the July – December 2018 monitoring period lacked storm event data.
    - i. Part I.A.2.c of the Permit requires that each monitored event shall identify the monitoring results as well as the date, duration, rainfall total, and duration between the sampled rainfall event and the last preceding storm event.
5. On October 4, 2018, DEQ staff conducted a compliance inspection of the Facility, and noted the following compliance deficiencies:
- a. Quarterly visual inspections had not been documented as having been conducted for the 3<sup>rd</sup> and 4<sup>th</sup> quarters of 2017, and the 1<sup>st</sup> and 2<sup>nd</sup> quarters of 2018.
    - i. Part I.A.1.a.(1) of the Permit requires that the Permittee perform and document quarterly visual examinations of the quality of the stormwater discharging from Facility's outfalls.
  - b. The Facility's SWPPP did not incorporate measures and controls consistent with the CB-TMDL requirements.
    - i. Part I.B.7.a of the Permit requires that the Permittee incorporate measures and controls into the SWPPP that are consistent with the assumptions and requirements of the TMDL.

- c. The Facility's recorded Pollution Prevention Team was not up-to-date.
    - i. Part III.B.1 of the Permit requires that the SWPPP be maintained to identify the responsible staff individuals and their responsibilities as related to pollution prevention.
  - d. Routine facility inspections were not conducted for the 3rd and 4th quarters of 2017, and the 1st, 2nd, and 3rd quarters of 2018.
    - i. Part III.B.5 of the Permit requires that knowledgeable Facility staff conduct routine facility inspections at least quarterly to evaluate pollution control effectiveness on site.
  - e. The 2017 annual comprehensive site compliance evaluation (CSCE) was not documented as having been conducted.
    - i. Part III.E of the Permit requires that the Permittee conduct comprehensive site compliance evaluations at least yearly.
  - f. The facility conducted two sampling events during the January – June 2018 monitoring period, however (based on the DMR received by DEQ) the samples were damaged for one sampling event, and the samples were held outside of the required holding-times for the second sampling event.
    - i. Part II.A.2 of the Permit requires that monitoring be conducted according to procedures approved under 40 CFR Part 136, or alternative methods approved by the U.S. Environmental Protection Agency.
6. NRO issued Warning Letters and a Notice of Violation for the violations noted above as follows:
- a. WL No. 2018-03-N-1017, issued March 28, 2018;
  - b. WL No. 2018-08-N-1026, issued September 17, 2018;
  - c. WL No. 2018-11-N-1005, issued November 19, 2018;
  - d. NOV No. 2019-02-N-0014, issued February 28, 2019;
  - e. NOV No. 2019-08-N-0012, issued September 4, 2019.
7. Mondelez Global LLC did not respond to the requests for corrective action documentation outlined in the Warning Letters, Inspection Report, and the February 28, 2019 Notice of Violation. Mondelez Global LLC did respond to the September 4, 2019, Notice of Violation.
- a. Part II.D of the Permit requires that the Permittee provide responses and requested information to the Department within a reasonable timeframe of such a request for purposes of evaluating compliance with the Permit.
8. Va. Code § 62.1-44.5 states that: “[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances

9. The Regulation, at 9 VAC 25-151-70, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
10. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
11. The Department has issued coverage under no permits or certificates to Mondelez Global LLC other than under VPDES Permit No. VAR05.
12. The unnamed tributary of Dawkins Branch is a surface water located wholly within the Commonwealth and is a “state water” under State Water Control Law.
13. Based on the results of the October 4, 2018, inspection, and review of DEQ files, the Board concludes that Mondelez Global LLC has violated the Permit, as described in paragraphs C(1) – C(12), above.
14. In order for Mondelez Global LLC to return to compliance, DEQ staff and Mondelez Global LLC have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Mondelez Global LLC, and Mondelez Global LLC agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of **\$6,750** within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier’s check payable to the “Treasurer of Virginia,” and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

Mondelez Global LLC shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Mondelez Global LLC shall be liable for attorneys’ fees of 30% of the amount outstanding.

### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of Mondelez Global LLC for good cause shown by Mondelez Global LLC, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Mondelez Global LLC admits to the jurisdictional allegations, and agrees not to contest, but neither admits nor denies, the findings of fact and conclusions of law in this Order.
4. Mondelez Global LLC consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Mondelez Global LLC declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Mondelez Global LLC to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Mondelez Global LLC shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Mondelez Global LLC shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Mondelez Global LLC shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance;  
and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Mondelez Global LLC. Nevertheless, Mondelez Global LLC agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - a. The Director or his designee terminates the Order after Mondelez Global LLC has completed all of the requirements of the Order;
  - b. Mondelez Global LLC petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Mondelez Global LLC.

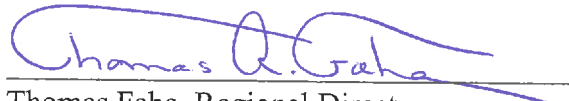
Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Mondelez Global LLC from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Mondelez Global LLC and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.



13. The undersigned representative of Mondelez Global LLC certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Mondelez Global LLC to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Mondelez Global LLC.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Mondelez Global LLC voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 18<sup>th</sup> day of November, 2019.

  
Thomas Faha, Regional Director  
Department of Environmental Quality

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Mondelez Global LLC voluntarily agrees to the issuance of this Order.

Date: 9/17/19 By: BENJAMIN BEWMAN, MCL  
BEB (Person) (Title)  
Mondelez Global LLC

Commonwealth of Virginia  
City/County of Prince William

The foregoing document was signed and acknowledged before me this 17 day of  
September, 2019, by Benjamin Berman who is  
MCL of Mondelez Global LLC on behalf of the company.

Adam A. Shreiner  
Notary Public

7500089  
Registration No.

My commission expires: March 31, 2023

Notary seal:

ADAM A. SHREINER  
NOTARY PUBLIC  
COMMONWEALTH OF VIRGINIA  
#7500089 COMM. EXP. 03/31/2023

## APPENDIX A SCHEDULE OF COMPLIANCE

1. **Mondelez Global LLC shall:**

- a. **Quarterly Visual Monitoring:** Submit to DEQ NRO copies of the Quarterly Visual Monitoring examination reports for the two quarters following execution of this Order. These reports shall be submitted by the 10<sup>th</sup> day of the month following the end of the monitored quarter, e.g., a visual examination report for the January 1 – March 31 monitoring period shall be submitted to DEQ no later than April 10<sup>th</sup>.
- b. **Quarterly Routine Facility Inspections:** Submit to DEQ NRO copies of the Quarterly Routine Facility Inspection reports for the two quarters following execution of this Order. These reports shall be submitted by the 10<sup>th</sup> day of the month following the end of the inspection quarter, e.g., an inspection report for the January 1 – March 31 period shall be submitted to DEQ no later than April 10<sup>th</sup>.
- c. Within 30 days of the execution of this Order, submit to DEQ NRO, for comment, a copy of the Facility's SWPPP incorporating measures and controls that are consistent with the CB-TMDL requirements of the Permit and updates to the Facility's Pollution Prevention Team.
- d. If the Facility has coverage under the 2019 Permit at the time that one of the injunctive relief items contained in this Appendix is performed, then the 2019 Permit requirements apply.

2. **DEQ Contact**

Unless otherwise specified in this Order, Mondelez Global LLC shall submit all requirements of Appendix A of this Order to:

**Virginia Department of Environmental Quality  
Northern Regional Office  
Attn: Enforcement  
13901 Crown Court  
Woodbridge, VA 22193**